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    - Emergency Transfer

What are Agencies Recommended to do with the VAWA Final Rule?

Useful links and sources
INTRODUCTION ON VAWA FINAL RULE

• VAWA Final Rule provide protections to victims of domestic and dating violence, sexual assault and stalking
• VAWA Final Rule was published in the Federal Register on November 16, 2016
• VAWA Final Rule became effective December 16, 2016
• VAWA Emergency Transfer Plan (VET) implementation deadline June 14, 2017

WHAT PROGRAMS ARE APPLICABLE TO VAWA FINAL RULE?

• Project-based Section 8
• 811 PRA
• 202/162 PAC
• 202/811 PRAC
• 202 SPRAC
• Fair Housing Act mortgage insurance for multifamily rental housing under section 236
• Fair Housing Act mortgage insurance for multifamily rental housing under section 221 (d)(3) and (d)(5) of the National Housing Act
• Housing Opportunities for Persons with AIDS (HOPWA) program
• HOME Investment Partnerships (HOME) program
• Homeless programs under title IV of the McKinney-Vento Homeless Assistance Act
• 515 Rural Development
• LIHTC
WHO ARE ELIGIBLE FOR VAWA PROTECTIONS?

- All residents/applicants who claim victims/who want protection
- Include affiliated persons such as spouse, parent and siblings
- Lawful occupant living in the household

WHEN AND WHAT FORMS TO USE?

At Move In and Annual Recertification (AR) occurring between Dec. 16, 2016 and Dec. 15, 2017
At Termination/Eviction/Transfer, the following two forms are **required** to be use
✓ HUD 5380 - Notice of Occupancy Rights
✓ HUD 5382 - Certification

At Emergency Transfer
✓ HUD 5381 - Model Emergency Transfer Plan (required to develop your own)
✓ HUD 5383 - Emergency Transfer Request (optional form, you may create your own)

At Move In, Annual Recertification and Transfer, Currently used on Section 8 properties, must include this form as an attachment to the lease
✓ HUD 91067 - VAWA Lease Addendum

Note:
- HUD is updating VAWA Lease Addendum (form 91067)
WHAT PROTECTIONS FOR TENANTS?

1. Tenants cannot be denied tenancy based solely on adverse factors that are a direct result of being a survivor of domestic or sexual violence.

2. Victims have a right to privacy. All information provided by the tenant must be kept confidential.

3. Incidents of threats of domestic violence, dating violence, sexual assault, or stalking will not be considered a “serious or repeated lease violation” by the victim, or “good cause” to terminate the tenancy rights of the victim.

4. If a family breaks up because of VAWA related violence, the housing assistance stays with the eligible victim.

5. Tenant can also request a transfer if they believe that they are threatened with imminent harm from further violence if they remain in the same unit.

6. For household receiving rental assistance, if a household member engages in a criminal act(s) of violence against another household member, VAWA allows for lease bifurcation.
WHAT PROTECTIONS FOR OWNER/PROPERTY MANAGEMENT?

1. The VAWA protections are not meant to limit the owner/property management from honoring court orders issued to either protect the victim or address the distribution of property in case a household breaks up. Nor, do the protections limit the owner/manager from terminating the victim’s lease for lease violations that are not related to domestic violence, dating violence, sexual assault, or stalking.

2. If the owner/property management can show that the victim’s presence poses an actual and imminent threat to other tenants or employees, the landlord may choose to end the lease term. The landlord must show reasonable actions to reduce or eliminate the threat prior to seeking eviction.

3. Tenants who are victims of domestic violence, dating violence, sexual assault, and/or stalking must contact their owner/manager as soon as possible to report any issue(s). The owner/manager may request that the tenant provide documentation of the abuse. Failure to report and document an occurrence of domestic violence, dating violence, sexual assault, or stalking within the required (14-days) or agreed upon deadline can be considered a lease violation if the tenant was properly notified of the VAWA protections.
WHAT OWNER/MANAGER MUST/CAN DO TO COMPLY WITH VAWA FINAL RULE?

DOCUMENTATION

1. Must give each household VAWA Notice of Occupancy Rights Form 5380 and Certification Form 5382 at Move In and Annual Recertification effective between December 16, 2016 through December 15, 2017.


3. Must provide 14 business days from the date of the written request for certification response or more time may be given.

4. Must accept the following documentation
   - HUD 5382 VAWA Certification
   - Official documentation such as court order, tribal record etc.
   - Professional statement signed by the professional and the resident/applicant

5. Must secure victim information and separate victim file relate to VAWA from regular tenant file.
WHAT OWNER/MANAGER MUST/CAN DO TO COMPLY WITH VAWA FINAL RULE?
(cont.)

DOCUMENTATION

1. May accept verbal request but written certification may also be required.
2. May require the following third party documentation within 30 days, only when there is conflicting information.
   a. court order, tribal record etc.
   b. professional statement signed by professional and resident/applicant
3. May deny the request for VAWA accommodation if applicant/resident does not provide required documentation within 30 days or the agreed certain period of time.

NOTE:
• Do Not ask VAWA victim to disclose or verify the name of the alleged perpetrator.
• Do Not put victim info. in tenant file or Do Not enter into any shared database unless required for an eviction action or required by law.
• Do Not deny tenancy based solely on documentation of adverse factors that are a direct result of being a survivor of domestic or sexual violence.
WHAT OWNER/MANAGER MUST/CAN DO TO COMPLY WITH VAWA FINAL RULE?

(continuation)

ACCOMMODATION

Owner/Manager should develop a policy that outlines the process to accommodate a resident/applicant who is a victim of a VAWA crime.

Including:
• Lease Bifurcation
• Emergency Transfer
WHAT OWNER/MANAGER MUST/CAN DO TO COMPLY WITH VAWA FINAL RULE?
(cont.)

ACCOMMODATION

Lease Bifurcation

• May attempt to evict/terminate occupancy rights/terminate assistance to the accused perpetrator who is a member of the household without removing the victim.

• Must process appropriate certifications reflecting any changes in household composition, income or expense.

• Must consider that if the remaining household continue to be qualified to remain in the unit as a “remaining household member”

• Must consider if the remaining household is eligible for the same covered housing program; If not, the owner/manager must give a reasonable amount of time for the victim to find alternative housing or establish eligibility under another covered housing program.
WHAT OWNER/MANAGER MUST/CAN DO TO COMPLY WITH VAWA FINAL RULE?

(cont.)

ACCOMMODATION

Emergency Transfer Plan

• Must explain that an applicant or resident qualifies for VAWA Emergency Transfer if
  a. Resident is a victim of VAWA crime
  b. reasonably believe that there is threat
  c. sexual assault occurred within 90 days period following the request for transfer

• Must include the following in their policies for the Emergency Transfer
  a. A description of reasonable efforts will take to assist a victim if a safe unit is not immediately available.
  b. A statement that allow resident to seek internal/external emergency transfer
  c. Policies for assisting applicant/resident who seeking an external emergency transfer

Note:
• VAWA final rule does not define transfer priorities. Priorities must be identified in the property’s Tenant Selection Plan.
• Emergency transfer requirements do not supersede any eligibility or occupancy requirements that apply under a covered housing program.
• Resident transferring to separate projects have to reapply as a new move in.
• Transfer to another unit internally is not considered a new applicant.
WHAT AGENCIES ARE RECOMMENDED TO DO WITH VAWA FINAL RULE?

Agencies should adopt Housing Credit policies and procedures that support VAWA compliance including:

- Referencing victims of domestic violence, dating violence, sexual assault, or stalking under the QAP selection criteria

- Clarifying that a domestic violence incident does not constitute good cause for eviction of the victim if the victim meets tenant occupancy rules

- Notifying Housing owners and property managers about victims’ rights under VAWA, including providing tenant notice, establishing an emergency transfer plan, and formalizing transfer request requirements

- Amending extended use agreements to explicitly reference VAWA requirements

- Modifying compliance monitoring procedures to identify VAWA noncompliance
CASE STUDY

If victim refuse to transfer and remain relationship with the abuser causing other tenants to fear for safety. What the management should do?

Possible procedure and resolutions:

- Determine if there is actual or imminent threat to other tenants or those employed or providing services to the property
- Eliminate the threat
- Evict/terminate victim only no other action available
- Bar the perpetrator from the property by permission of local law
- Change the victim’s lock
- Encourage the victim to transfer or allow lease early termination
- Have the victim access to available services
For more details, please use the following helpful link and other source:

HUD Forms

VAWA forms available on HUDCLIPS

HUD webcast on Youtube

DCA website